

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

HOSPITAL OF SAINT RAPHAEL

Employer

and

TEAMSTERS LOCAL 443, a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

Case No. 34-UC-120

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act.
4. The Employer filed the instant petition to clarify the bargaining unit currently represented by the Union to specifically exclude from the unit 20 individuals who occupy the following positions: the Lead Clerk Receptionist, the Back Lot Parking Attendant, the Parking and Services Coordinator, the Secretary

¹ In accord with the parties' agreement, the Hearing Officer took administrative notice of, and incorporated into the record herein, the transcript and exhibits in *Hospital of Saint Raphael*, Case No. 34-RC-1543, and the stipulated election agreement, the eligibility lists, and the Certification of Representative in *Hospital of Saint Raphael*, Case No. 34-RC-1571.

for Nursing Administration (Staff Development), the Clerk Receptionist Room Scheduler, the Office Coordinator for Anatomical Pathology, two Senior File Unit Clerks-Medical Records, the Lead Film File Clerk, the Lead Medical Transcriptionist, the Lead Transportation Aide, the three Facility Coordinators, and the six Food Service Coordinators.² The Union opposes the Employer's petition on the grounds that the Employer had argued to include almost all of these positions in the unit in Case Nos. 34-RC-1543 and 1571, and that the Employer has failed to satisfy its burden of establishing that there is newly discovered or previously unavailable evidence or special circumstances which would warrant the exclusion of any of these positions.

The Employer, a Connecticut corporation with its main facility located in New Haven, Connecticut, is engaged in the operation of a non-profit acute care hospital. In Case No. 34-RC-1543, the Union sought to represent a unit composed of the Employer's non-professional service employees. Following a hearing held on various dates in February and March 1998, during which the Union, contrary to the Employer, sought to exclude from the unit approximately 69 positions on various grounds, a Decision and Direction of Election (DDE) issued on April 10, 1998. In the DDE it was determined that all but 28 of the positions in dispute therein should be included in the unit, and that the employees in those 28 positions should be allowed to vote subject to challenge. Attached to the DDE was Appendix A-1, containing a list of stipulated unit inclusions, and Appendix A-2, containing a list of stipulated unit exclusions. Inasmuch as the unit found appropriate was broader than that sought by the Union, the Union was permitted to withdraw its petition without prejudice, which it did on April 23, 1998. Five days later, the Union filed the petition in Case No. 34-RC-1571 seeking to represent the employees in the unit found appropriate in Case No. 34-RC-1543.

² Based upon the stipulation of the parties, I shall clarify the unit to exclude the Elevator Operator, the Office Coordinator-Operating Room, and the Information Consultant, and to include the Graphic Designer II, the Groundskeeper, the Senior Groundskeeper, the Lead Materials Handler and the Social Worker Assistant.

On May 8, 1998, the parties entered into a stipulated election agreement in Case No. 34-RC-1571. Although the unit in the stipulated election agreement did not specifically identify those positions referred to in Appendices A-1 and A-2 or address any of the job classifications that had been permitted to vote subject to challenge, it was otherwise identical to the one found appropriate in the DDE. The election eligibility list submitted by the Employer included almost all of those employees who had been permitted by the DDE to vote subject to challenge.³ However, the parties did not enter into any agreement that the eligibility list was intended to resolve all eligibility questions. See e.g. *Norris-Thermador Corp.*, 119 NLRB 1301 (1958). Although the Union lost the election, as a result of meritorious objections a second election was conducted on December 9, 1999. Once again, although the eligibility list submitted by the Employer included almost all of the employees who had been permitted by the DDE to vote subject to challenge,⁴ the parties did not enter into any agreement that the eligibility list was intended to resolve all eligibility questions. *Norris-Thermador Corp.*, *supra*. The Union prevailed in the second election, and a Certification of Representative issued on December 17, 1999. The parties have engaged in collective bargaining negotiations since that time, but to date, no collective bargaining agreement has been reached.

In *Grancare, Inc., d/b/a Premier Living Center*, 331 NLRB No. 9 (May 15, 2000), the Board recently reaffirmed its longstanding rule that "in the absence of newly discovered and previously unavailable evidence or special circumstances, an employer may not challenge the validity of a union's certification based on a belief that unit members are statutory supervisors if it failed to raise the issue during the representation proceeding [emphasis added]." In the instant matter, although the Employer had initially argued for the inclusion of almost all of the

³ This list did not specifically identify those employees who occupied the positions left unresolved by the DDE. None of the 20 employees in issue herein was challenged by the Employer and only one was challenged by the Union.

⁴ Unlike the list provided in the first election, this list did identify those employees who occupied the positions left unresolved by the DDE. None of the 20 employees in issue herein was challenged by the Employer, but 11 were challenged by the Union.

individuals it now seeks to exclude, it is not challenging or contesting the validity of the Union's certification. Rather, it is only questioning the unit placement of 20 individuals out of a unit composed of over 800 employees.

With regard to 16 individuals,⁵ as the Employer correctly notes, their eligibility was not resolved prior to the elections. Indeed, 14 of these individuals were among those whose status were specifically deferred to the Agency's challenge procedure in the DDE. In this regard, it is well established that when any such challenged ballots are not determinative of the results of the election, the parties are permitted to question the unit placement of those individuals through the Agency's unit clarification procedures. See e.g. *Niagara University*, 227 NLRB 313 (1976); *D'Youville College*, 225 NLRB 792 (1976); *Belo Broadcasting Corp.*, 225 NLRB 253 (1976). See also, NLRB Casehandling Manual Part Two Representation Proceedings, Section 11490.1. Furthermore, although the Employer included the disputed employees on the eligibility lists, it is well established that the placement of an employee's name on an eligibility list and permitting an employee to vote without challenge is not determinative of the employee's status. *Kirkhill Rubber Co.*, 306 NLRB 559, 560, footnote 4, (1992). Therefore, in view of the foregoing, notwithstanding the fact that the Employer had consistently argued that 14 of these 16 individuals should be included in the unit, I find that it is not now estopped from seeking their exclusion.

With regard to the other four individuals,⁶ their eligibility was determined in the prior cases. Thus, one was included in the unit by agreement of the parties. The other three, in agreement with the Employer's position, were specifically included in the unit in the DDE. It is well established that absent newly discovered and previously unavailable evidence or special circumstances, an employer is precluded from litigating in a unit clarification proceeding the

⁵ Viz: the Clerk Receptionist Room Scheduler, the Office Coordinator for Anatomical Pathology, the 6 Food Service Coordinators, the 3 Facility Coordinators, the 2 Senior File Unit Clerks, the Lead Medical Transcriptionist, the Lead Transportation Aide, and the Lead Film File Clerk.

⁶ Viz: the Back Lot Parking Attendant, the Parking and Services Coordinator, the Secretary for Nursing Administration (Staff Development), and the Lead Clerk Receptionist.

status of individuals who it had previously agreed to include in a certified unit. *Grancare, Inc.*, supra; *I.O.O.F. Home of Ohio Inc.*, 322 NLRB 921, 922-923 at footnote 7 (1997). With regard to these four disputed individuals, the Employer does not claim newly discovered or previously unavailable evidence. Rather, it maintains that one should be excluded as a guard, that one should be excluded as a supervisor, and that two individuals have undergone "substantial changes" in their duties and occupy newly established classifications outside of the bargaining unit.

Special or Changed Circumstances

Lead Clerk Receptionist

The Employer contends that the Lead Clerk Receptionist should be excluded from the unit as a supervisor. However, in agreement with the Employer, it was determined in the DDE that the Lead Clerk Receptionist was to be included in the unit, and that she was not to be excluded, as the Union had maintained, as a business office clerical employee. Although the Employer now seeks her exclusion as a supervisor, it raised no such contention previously.

The record in the instant case establishes that there have been no changes in the job description, basic duties and responsibilities, or other terms and conditions of employment of the Lead Clerk Receptionist since the issuance of the DDE or the approval of the stipulated election agreement. Although the Employer has introduced evidence purporting to establish her supervisory authority, it does not claim that this evidence was newly discovered or previously unavailable. Therefore, based upon the foregoing, I find that the Employer is precluded from utilizing the unit clarification procedure to exclude the Lead Clerk Receptionist from the certified unit. *Grancare, Inc.*, supra; *I.O.O.F. Home of Ohio*, supra.

Accordingly, the Employer's request to clarify the existing unit to exclude the Lead Clerk Receptionist is denied, and that position will be included in the unit.

The Back Lot Parking Attendant

As indicated on Appendix A-1 to the DDE, the Back Lot Parking Attendant was included in the unit by stipulation of the parties. However, notwithstanding its prior agreement, the Employer now contends that the Back Lot Parking Attendant is a guard and should be excluded from the unit which specifically excludes guards.

The position of Back Lot Parking Attendant has been occupied by Robert DePino for 12 years. In about February 2000, DePino began reporting directly to Director of Security Thomas Mendillo. Prior to that time, he reported directly to the manager of support services. Also reporting directly to Mendillo are an unspecified number of dispatchers, and the employees of a private contractor which supplies the Employer with uniformed security employees. The record indicates that there have been no other changes to the duties or responsibilities of the Back Lot Parking Attendant since the issuance of the DDE or the approval of the stipulated election agreement.

DePino spends approximately 50 per cent of his working time in a booth located in the center of the "back lot." The back lot is actually a surface lot with 58 parking spaces located amidst a number of the Employer's buildings. Several of these buildings may be accessed directly from the street. However, the only access to one of these buildings, the Employer's Cancer Center, is from the lot itself. As a result, all visitors to the Cancer Center park in the back lot. Employees are not permitted to park in the back lot. In this regard, each day DePino is provided with a list of all expected visitors to the Cancer Center who are allowed to park in the lot. Thus, when a vehicle enters the lot, DePino approaches the vehicle and asks them their name and the nature of their business. If they indicate that they are visiting the Cancer Center, he verifies that their name is on the list. In the event that DePino cannot determine that they have a legitimate purpose for parking in the back lot, he directs that person to exit the parking lot and park somewhere else. In the event that DePino discovers an unauthorized vehicle in the lot, he notifies the contractor's security shift supervisor, who has the authority to have a vehicle towed.

DePino also spends about 10 per cent of his time walking around the back lot to “see if anything is out of the ordinary.” In this regard, he questions any unauthorized pedestrians who may enter or cross the lot to access the Cancer Center or other buildings. For example, in the event that a pedestrian attempts to enter the property without a hospital ID badge, DePino asks them what their business is on the property. In the event that he discovers either a pedestrian or a person in a vehicle attempting to remove hospital property without the proper paperwork, he detains the individual and notifies the security shift supervisor, who apparently then deals with the situation. While not entirely clear, it appears that DePino spends the remainder of his time preparing incident reports regarding any towing or the improper removal of hospital property.

Based upon the above and the record as a whole, I find that the Back Lot Parking Attendant is a guard within the meaning of the Act. *St. Regis Paper Co.*, 128 NLRB 550 (1960); *Drexel Furniture Co.*, 116 NLRB 1434, 1436-1437 (1958); see also *Rhode Island Hospital*, 313 NLRB 343, 345-346 (Traffic Control Guard) (1993). Although there has been no significant changes in DePino's terms and conditions of employment, in view of the more restrictive statutory limitations with regard to the unit placement of guards, as compared to supervisors, I find that the Employer's pre-election stipulation to include the Back Lot Parking Attendant does not preclude the Employer from raising this matter in a unit clarification procedure. *ACL Corporation d/b/a Atlanta Hilton and Towers*, 278 NLRB 474, footnote 1 (1986).

Accordingly, I shall clarify the existing unit to exclude the Back Lot Parking Attendant.

Parking and Services Coordinator

The Employer seeks to exclude Parking and Services Coordinator Anne Morgillo as a business office clerical employee. Up until recently Morgillo was employed as the Secretary, Seton and Management, a position which was found in the DDE not to be a business office clerical employee and specifically included in the unit. This determination was consistent with the position that the Employer had taken in the prior case and contrary to the position advanced by the Union.

The record reflects that as a result of several managerial changes in the Employer's parking department, as well as the transfer of the title to certain parking properties from Seton Realty to the Employer, Morgillo's job title, duties and responsibilities have changed since she assumed the position of Secretary, Seton and Management in 1997. The primary changes to her job duties since the issuance of the DDE involve her oversight of revenue collection from employees and non-employees who lease parking spaces from the Employer, and the preparation of financial reports for the Employer's finance department. As a result, Morgillo now spends the majority of her time handling financial and billing matters and interacting with the Employer's finance department. However, in her new position Morgillo has continued to perform all of her other administrative duties connected to the handling of the Employer's parking accounts, and there have been no changes to her work location or any other terms and conditions of employment since either the issuance of the DDE or the approval of the stipulated election agreement.

It is well established that although business office clericals constitute a separate unit at acute care hospitals, *Collective Bargaining Units in the Health Care Industry; Final Rule*, 284 NLRB 1579 (1987), the Board will include in overall non-professional units at acute care hospitals those clerical employees who are located geographically throughout the hospital in various departments composed of other non-professional employees. *Rhode Island Hospital*, 313 NLRB 343, 359 (1993); *St. Francis Hospital*, 219 NLRB 963, 964 (1975). In this regard, the fact that such clerical employees may perform typical business office clerical functions, such as billing, is insufficient to establish that they are business office clerical employees. *Rhode Island Hospital*, supra, at 361-362. Inasmuch as the only change in Morgillo's job duties involves additional billing functions, there is no basis on which to find her a business office clerical employee.

Accordingly, the Employer's request to clarify the existing unit to exclude the Parking and Services Coordinator is denied, and that position will be included in the unit.

Secretary for Nursing Administration/Staff Development

The Employer seeks to exclude June Blossom, Secretary, Nursing Administration/Staff Development, as a confidential employee. Until October 1999, Blossom was employed as the Secretary, Physical Medicine, a position which was found in the DDE not to be a business office clerical employee and specifically included in the unit. This determination was consistent with the position that the Employer had taken in the prior case and contrary to the position advanced by the Union.

The record clearly reveals that although Blossom's previous position in the physical medicine department was "eliminated," she continues to perform approximately 25 percent of those duties in her current position. The remainder of her current duties, which are now performed in a different location, consists of providing clerical support to various individuals in the department of nursing, including the director of staff development and clinical support, the director of nursing resources, the director of patient services, and the vice-president of patient services.⁷ These individuals, who are all generally responsible for "nursing administration", establish the policies that govern the department of nursing, including nursing structure standards, standards of practice, and administrative policies. They are also directly involved in the processing of grievances. Blossom's clerical support for the above individuals includes the "word processing" of documents related to grievances, employee evaluations, changes in job duties, wage rates and personnel policies, and other nursing policy revisions. More particularly, Blossom types "anecdotal reports" of grievance meetings prepared by the manager who is responsible for deciding the grievance, which includes the manager's decision on the grievance. Blossom also types proposed and final revisions to nursing administration policies and procedures, including those dealing with labor relations.

⁷ In developing Blossom's new position, the Employer transferred to her some or all of the duties which were previously performed by other secretaries in the nursing department, including the Secretary, Staff Development. In this regard, in the DDE it was found, in agreement with the Employer and contrary to the Union, that the Secretary, Staff Development was not a confidential employee, and that position was included in the unit.

Based upon the above and the record as a whole, I find that Blossom is not a confidential employee. In this regard, it is well established that to be excluded as a confidential employee, an employee must assist or act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. *Rhode Island Hospital*, supra, at 350-351; *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160, 1164 (1995); *Los Angeles New Hospital*, 244 NLRB 960, 961 (1979). Although Blossom performs general clerical support for the director of staff development and clinical support, the director of nursing resources, the director of patient services, and the vice-president of patient services, there is insufficient evidence to establish that Blossom acts in a “confidential capacity” to these individuals, and her mere access to employee personnel files and other confidential matters is insufficient to confer confidentiality status. *Id.*

Accordingly, the Employer’s request to clarify the existing unit to exclude the Secretary, Nursing Administration/Staff Development is denied, and that position will be included in the unit.

Unresolved Positions

Office Coordinator for Anatomical Pathology

The Employer, contrary to the Union, contends that the Office Coordinator for Anatomical Pathology should be excluded from the unit as a supervisor under Section 2(11) of the Act. The position was not considered or resolved in either of the prior cases and the job classification is not mentioned in the description of the certified unit.

The record reflects that the incumbent, Donna Chapman, functions as the office manager of the Anatomical Pathology Department, overseeing the work of five secretarial employees. This requires her to schedule employees and assign them work, prepare written evaluations, initiate disciplinary actions, and interview and recommend applicants for employment. Based upon the above and the record as a whole I find that the Office Coordinator for Anatomical Pathology is a supervisor within the meaning of the Act. *Clements Auto Co. d/b/a Southern*

Minnesota Supply Co., 116 NLRB 968, 971 (1956); See also *Brooks Brothers*, 261 NLRB 876, 882 (1982).

Accordingly, I shall grant the Employer's request and clarify the unit to exclude the Office Coordinator for Anatomical Pathology.

Clerk Receptionist Room Scheduler

The Employer, contrary to the Union, would clarify the unit to exclude Clerk Receptionist Room Scheduler Virginia Fernandes as a confidential employee. Virginia Fernandes has occupied the position of Clerk Receptionist Room Scheduler in the Human Resources Department since the position was established in November 2000. Prior to that time she had occupied the position of Human Resource Associate. In approximately August 1999, the Human Resources Department moved from the sixth floor of the main hospital where it had occupied a large open lobby area near the elevators and a seating area for visitors, to a separate building about a block from the main hospital. Prior to its relocation a Clerk Receptionist had been stationed in the open lobby area and performed typical receptionist and related clerical duties. In its new location, the Human Resources Department occupies a much smaller area, which is not as accessible to the public or employees. The positions of Clerk Receptionist and Human Resource Associate were not addressed in either of the prior cases and these job classifications are not mentioned in the description of the certified unit.

Prior to Fernandes selection for the new position of Clerk Receptionist Room Scheduler in November 2000, some clerk receptionist duties were handled by Fernandes and the other Human Resource Associates on a rotating basis. In her current position, Fernandes works Monday through Friday, 8 a.m. to noon. She reports directly to Senior Human Resources Consultant Lisa Miles. She spends approximately 70 per cent of her time at her desk in the lobby of the Human Resources Department, where she greets visitors, answers the phone, and performs other clerical duties such as retrieving information from the Employer's computerized personnel data system, and scheduling the use of rooms in the hospital. Due to her prior service as a Human Resource Associate, Fernandes spends the remainder of her time assisting various other individuals in

the Human Resources Department, including Miles, Director of Employee Relations Kate Fornal, Vice President of Human Resources Michael Dimenstein, Benefits Manager Carol Resnick, two unidentified senior human resource consultants, and the four human resource associates. With regard to Miles, Fornal, Dimenstein, Resnick and the two senior human resource consultants, their job duties include advising more senior hospital officials regarding personnel issues and policies. With regard to Fornal, the record reveals that she is the Employer's designated representative in dealing with the Union regarding grievances. With regard to the human resource associates, they are responsible for processing all personnel transactions involving hospital employees. They also provide input and advice on personnel matters to their superiors in the department.

The assistance Fernandes gives to the other members of the Human Resources Department includes providing them with information about employees, which she extracts from personnel files and the Employer's computerized personnel data system, and answering job performance questions from the human resource associates. The record does not otherwise reflect the nature of the assistance Fernandes provides to the other department members, nor is there any evidence that she performs any clerical or administrative functions for them.

Fernandes attends a weekly human resource department staff meeting during which employees share what projects they are working on and other major departmental developments. She also attends a lengthier and more detailed monthly department staff meeting, during which various personnel policies and issues are discussed, including those involving collective bargaining negotiations with the Union. While the record does not reflect the nature or extent of her participation, if any, during such meetings, it does reveal that Fernandes does not type any reports or minutes arising therefrom. Due to the location of her desk, which is outside of Fornal's office and across from the department's conference room, Fernandes may overhear discussions involving personnel and collective bargaining issues, including grievances. Due to her access to all

records and files in the human resource department, Fernandes is also aware of all personnel policy changes prior to their announcement to other hospital employees.

Based upon the above and the record as a whole, I find that the clerk receptionist room scheduler is not a confidential employee. *Rhode Island Hospital*, supra, at 350-351; *Lincoln Park Nursing and Convalescent Home, Inc.*, supra, at 1164; *Los Angeles New Hospital*, supra, at 961. In this regard, there is no evidence that Fernandes acts in a “confidential capacity” to Miles, Fornal, Dimenstein, or any other individual in the human resource department, and her mere access to employee personnel files and other confidential matters is insufficient to confer confidentiality status. Id.

Accordingly, the Employer’s request to clarify the unit to exclude the clerk receptionist room scheduler is hereby denied, and that position will be included in the unit.

Senior File Unit Clerk – Medical Records

Carmen House and Vivian Mention occupy the position of Senior File Unit Clerk – Medical Records. The Union, contrary to the Employer, sought to exclude House and Mention from the unit as supervisors in 34-RC-1543, and they were permitted to vote subject to challenge by the DDE. Both House and Mention appeared on the eligibility list for both elections.

The record in 34-RC-1543 reflects that the Senior File Unit Clerks oversee the work performed by medical record assistants. They schedule such employees for work and insure that such work is performed, and they deal with any issues, complaints or problems that arise in the course of the day. However, they spend approximately 80% of their workday performing the same work as the medical records assistants. The senior file unit clerks also attend meetings with the manager of the medical records department concerning policies, procedures, and long-range planning; participate in the hiring process as a “team” with the manager by interviewing applicants and making hiring recommendations; provide input to the manager for the preparation of the monthly progress report for probationary employees, as well as the annual evaluations for all employees; and

provide input and recommendations to the manager regarding the discipline or termination of employees.

The record in the instant case reveals that Karen Lawler, the Director of Medical Records, is primarily responsible for the overall operation of the medical records department. Reporting directly to Lawler is Kathy Phillips, Manager of Operations. House and Mention report directly to Phillips. House, who is assigned to the day shift, and Mention to the night shift, have the same duties and responsibilities on their respective shifts. In this regard, they each oversee the work of seven medical records assistants, who are responsible for retrieving and refiling patient medical records. House and Mention spend approximately 80% of their time performing the same retrieval and refiling work. The vast majority of such work is routine in nature, consisting of filing documents in existing records, filing records received from the record completion area, and performing special projects related to such medical records.

The remainder of House and Mention's work time is spent assigning and re-assigning work to the medical records assistants, participating with Phillips in the interview of prospective employees, preparing monthly progress reports regarding the performance of probationary employees, providing input to Phillips regarding the preparation of annual evaluations, processing requests for time off, preparing monthly reports on productivity standards which are also used by Phillips in the annual evaluation process, and informally counseling employees. With regard to the hiring of employees, on one occasion House and Mention verbally recommended the hiring of an employee who was actually transferring from another hospital department. With regard to the counseling of employees, on one occasion House spoke to an employee about an attendance problem. With regard to the assignment of work, House and Mention may authorize employees to work overtime where it is necessitated by the work load, but such overtime may not exceed a pre-approved cap. With regard to their preparation of the monthly reports on productivity standards, such reports merely reflect the volume of work assigned and actually performed by each employee, and contain no other commentary or recommendations. House and Mention are held

accountable for the same productivity standards as the medical records assistants.

Based upon the above and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the Senior File Unit Clerks are supervisors within the meaning of Section 2(11) of the Act. In this regard, I note that it is well established that the burden of proving supervisory status is upon the party asserting it. *Pine Brook Care Center, Inc.*, 322 NLRB 740 (1996), and cases cited therein at footnote 3. Moreover, the Board has long held that it has a duty “not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect.” *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995), citing *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), *affd.* in relevant part, 794 F.2d 527 (9th Cir. 1986). Against this background, I note that there have been no changes in the job description, basic duties and responsibilities, or other terms and conditions of employment of the Senior File Unit Clerks since the issuance of the DDE, wherein the Employer proffered evidence and consistently sought to include the Senior File Unit Clerks in the unit as non-supervisory employees. Moreover, I note that while the Senior File Unit Clerks may assign and direct the work of medical record assistants, such authority is routine in nature, as it is based primarily on employee availability and work load, and does not require the exercise of independent judgment. *Children’s Farm Home*, 324 NLRB 61 (1997); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998); *Beverly Enterprises, Alabama, Inc. d/b/a Riverchase Health Care Center*, 304 NLRB 861, 863-864 (1991); *Quality Chemical, Inc.*, 324 NLRB 328, 330 (1997); *S.D.I. Operating Partners, L.P., Harding Glass Division*, 321 NLRB 111 (1996)(leadman). I also note that House and Mention spend 80% of their work time engaged in the same work as the medical records assistants. *Capri Sun, Inc.*, 330 NLRB No. 158, slip op. at 7-9 (3/31/00); *Texas Institute for Rehabilitation and Research*, 228 NLRB 578 (1977)(head nurse). As for their role in hiring, evaluating and disciplining employees, given the fact that higher management is actively involved in these matters and determine the appropriate action, I find that House and Mention are

essentially conduits of information and that their responsibility is merely reportorial in nature. *Capri Sun*, supra; *MJ Metal Products, Inc.*, 325 NLRB 240 (1997); *Rest Haven Living Center, Inc. d/b/a Rest Haven Nursing Home*, 322 NLRB 210, 212 (1996).

Accordingly, the Employer's request to clarify the unit to exclude the Senior File Unit Clerks-Medical Records is hereby denied, and that position will be included in the unit.

Positions in the Department of Radiology

The Employer contends that three other "lead staff" positions in the Department of Radiology, viz., Lead Transportation Aide, the Lead Film File Clerk, and the Lead Medical Transcriptionist, should be excluded from the unit based upon their supervisory status. The Union, contrary to the Employer, sought to exclude all three positions from the unit as supervisors in 34-RC-1543. All three were permitted to vote subject to challenge by the DDE. The individuals occupying those position appeared on the eligibility list for both elections.

Lead Transportation Aide: The record in 34-RC-1543 reveals that the Lead Transportation Aide spends approximately 80 percent of his time performing the same patient transport duties as the transportation aides. The remainder of his time is apparently spent scheduling and assigning transportation aides to transport patients who are receiving radiology department services. Although the Lead Transportation Aide participates in the interview of job applicants and counsels employees about performance issues, all decisions regarding hiring, discipline, and evaluations are made after independent review by the Manager of Radiology Systems and Support.

The record in the instant case reveals that the position of Lead Transportation Aide is occupied by Henry Okakpu. Okakpu is responsible for scheduling, assigning and dispatching approximately 8 full-time and 12 part-time transportation aides to patients who need to be brought to the radiology department for radiological procedures. In performing that function, he follows the department procedure of "first in, first out," unless altered by an emergency situation. To insure that all work is performed in a timely manner, in accordance

with department procedures he may assign employees to work overtime and call in part-time and per diem employees. He also monitors the attendance of the transportation aides. Okakpu has a desk in an open holding area in the radiology department, where he utilizes a computer terminal to process requests for patient transport to the department. Contrary to the evidence offered by the Employer in 34-RC-1543, the Employer introduced evidence in the instant case that Okakpu spends almost all of his work time assigning the transportation aides, and does not regularly transport patients. With regard to hiring, Okakpu interviews all applicants and makes a hiring recommendation to System Support Manager Peter Rzasa, who in turn interviews the applicant and makes a recommendation to the administrator of the department of radiology, who makes the final hiring decision. With regard to discipline, Okakpu may informally counsel employees concerning their work, but any formal discipline must be reviewed and approved by Rzasa and the administrator. Although he may also recommend the termination of employees, this too is subject to the review and approval of Rzasa and the administrator. With regard to evaluations, which may determine whether an employee qualifies for a wage increase, Okakpu prepares the forms, which are subject to the review and approval of Rzasa, who joins Okakpu in presenting the evaluation to the employee.

Lead Medical Transcriptionist: The record in 34-RC-1543 reveals that the Lead Medical Transcriptionist spends approximately 80 percent of her workday performing the same work as the medical transcriptionists. The remainder of her time is apparently spent overseeing the work performed by the medical transcriptionists. In this regard, the Lead Medical Transcriptionist schedules and assigns work to the medical transcriptionists, monitors their attendance, productivity, and work quality, and resolves problems that arise in the course of the workday. The Lead Medical Transcriptionist may also interview applicants for employment and make hiring recommendations to the manager, who ultimately makes all hiring decisions, and may counsel employees regarding their attendance and work performance, document such counseling, and provide input and recommendations to the manager regarding potential disciplinary action.

The record in the instant case reveals that the position of Lead Medical Transcriptionist is occupied by Eileen Paradis. Contrary to the evidence offered by the Employer in 34-RC-1543, the Employer introduced evidence in the instant case that Paradis spends approximately 50 percent of her time overseeing the work performed by seven medical transcriptionists. In this regard, she schedules and assigns their work, monitors their productivity and the quality of their work, and generally insures that all work is performed in the proper timeframe. In accordance with the Employer's guidelines and procedures, Paradis can call in employees to work in the event the department is shorthanded, and may authorize employees to work overtime, in order to insure that all transcription work is completed within a 24 hour period or any other period of time mandated by a physician. With regard to hiring, Paradis interviews all applicants and makes a hiring recommendation to System Support Manager Peter Rzasa, who in turn interviews the applicant and makes a recommendation to the administrator of the department of radiology, who makes the final hiring decision. With regard to discipline, Paradis may informally counsel employees concerning their work, but any formal discipline, including termination, must be reviewed and approved by Rzasa and the administrator. With regard to evaluations, Paradis prepares the form, reviews it with Rzasa, and then gives it to the employee. Such evaluations may determine whether an employee qualifies for a wage increase.

Lead Film File Clerk: The record in 34-RC-1543 reveals that the Lead Film File Clerk spends approximately 80 percent of his workday performing the same work as the film file clerks. The remainder of his time is apparently spent overseeing the work performed by the film file clerks in the radiology film room. In this regard, the Lead Film File Clerk schedules and assigns work to such employees, and resolves any problems that arise in the course of the workday. The Lead Film File Clerk may also interview applicants for employment and make hiring recommendations to the manager, who ultimately makes all hiring decisions. The Lead Film File Clerk may also provide input to the manager in the preparation of employee evaluations. He also counsels employees regarding

their attendance and work performance, documents such counseling, and provides input and recommendations to the manager regarding potential disciplinary action.

The record in the instant case reveals that the position of Lead Film File Clerk is occupied by Dennis Neilson. There is no indication that the amount of time he spends performing the same or similar duties as the 9 full-time and 4 part-time film file clerks has changed since the issuance of the DDE. Those duties consist of filing, retrieving, and delivering patient imaging records such as x-rays, CAT scans and ultrasound. Neilson's responsibility for scheduling and assigning work to the film file clerks includes calling in employees to work in the event the department is shorthanded, and authorizing employees to work overtime. Such decisions are a product of the medical demands of the department on any particular day, and are ultimately governed by the medical priority of imaging documents which must be processed. With regard to overtime, Neilson selects employees for overtime by utilizing a list maintained by the department with the object of insuring that everyone has the same opportunity to work overtime. With regard to hiring, Neilson interviews all applicants and makes a hiring recommendation to System Support Manager Peter Rzasa, who in turn interviews the applicant and apparently makes the final hiring decision. With regard to evaluations, Neilson prepares the form, reviews it with Rzasa, and then gives it to the employee. As previously noted, such evaluations may determine whether an employee qualifies for a wage increase. With regard to discipline, although the Employer proffered testimony that Neilson is responsible for "determining discipline of film file clerks", no testimony was proffered as to how he disciplines such employees. In this regard, his job description merely states that he "[m]ay counsel personnel as indicated by performance or attitude under the direction and supervision of the Manager", and that he "[d]ocuments performance problems or recognition according to prescribed procedures and reports to Manager".

Based upon the above and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the Lead Transportation Aide,

the Lead Medical Transcriptionist or the Lead Film File Clerk are supervisors within the meaning of the Act. *Pine Brook Care Center, Inc.*, supra; *Chevron Shipping Co.*, supra. In so concluding, I note that there have been no changes in the job description, basic duties and responsibilities, or other terms and conditions of employment of these employees since the issuance DDE, wherein the Employer proffered evidence and consistently sought to include them in the unit as non-supervisory employees.⁸ In this regard, I note particularly that the Employer has failed to explain the basis for its inconsistent positions or the conflicting evidence it has introduced.⁹

Accordingly, the Employer's request to clarify the unit to exclude the Lead Transportation Aide, the Lead Medical Transcriptionist and the Lead Film File Clerk is hereby denied, and those positions will be included in the unit.

Facility Coordinators

The Employer seeks to clarify the unit to exclude the three Facility Coordinators in the Environmental and Support Services Department as supervisors. The Union, contrary to the Employer, sought to exclude them from the unit as supervisors in 34-RC-1543. All three were permitted to vote subject

⁸ With regard to their authority to assign, direct or schedule work, I find that such authority is routine in nature, as it is based primarily on employee availability or work load, is done in accordance with the Employer's pre-established guidelines and procedures, and does not require the exercise of independent judgment. *Vargas, Inc.*, 167 NLRB 805, 806 (1967); *Carey Transportation, Inc.*, 119 NLRB 332 (1957); *Providence Hospital*, 320 NLRB 717, 735 (1996)(lead neuro outpatient rehab center); *Beverly Enterprises, Alabama, Inc. d/b/a Riverchase Health Care Center*, supra; *Quality Chemical, Inc.*, supra; *S.D.I. Operating Partners, L.P., Harding Glass Division*, supra.

With regard to their role in hiring, evaluating and disciplining employees, given the fact that higher management is actively involved in these matters and determines the appropriate action, I find that they are essentially conduits of information and that their responsibilities in this regard is merely reportorial in nature. *Capri Sun*, supra; *MJ Metal Products, Inc.*, supra; *Rest Haven Living Center, Inc. d/b/a Rest Haven Nursing Home*, supra.

⁹ For example, in 34-CA-1543 the Employer introduced evidence that the Lead Transportation Aide and the Lead Medical Transcriptionist spend 80 percent of their time performing unit work. However, in the instant case, without claiming changed circumstances or proffering any other reason, the Employer presented evidence that the percentage of time these individuals spend performing unit work was none, and 50 percent respectively. Under these circumstances, I further find that all three of these individuals spend 80 percent of their work time engaged in the performance of unit work. *Capri Sun*, supra; *Texas Institute for Rehabilitation and Research*, supra.

to challenge by the DDE, and their names appeared on the eligibility list for both elections.

The Environmental and Support Services Department, which operates seven days a week and most hours of each day, is responsible for all housekeeping and groundskeeping services throughout the hospital. Primarily responsible for the overall operation of the department is Manager Frank Caputo. There are also two Facility Managers who directly oversee all work on the day shift. The three Facility Coordinators, Henry Turcio, James Dill and Mark Alexander, report directly to Caputo. They oversee the work performed by porters, aides and project employees on the second and third shifts during the week, and on all shifts during the weekend. In this regard, Turcio generally works a 12 hour shift beginning at either 3 p.m. or 7 p.m. Dill generally works a 10 hour shift beginning at 3 p.m., Tuesday through Friday. Alexander generally works a 12 hour shift, from 7 a.m. to 7 p.m. on Saturday and Sunday, a 12 hour shift from 3 p.m. to 3 a.m. on Monday in place of Dill, and a four hour shift from 3 p.m. to 7 p.m. on an unspecified day. There are no other managers on duty for the overwhelming portion of the time that Facility Coordinators are working. There are approximately 28 employees on the evening shift, 15 on the night shift, and 12-15 on the weekends.

The record in 34-RC-1543 revealed that the Facility Coordinators were responsible for insuring that the porters, aides and project employees who perform the housekeeping services for the various shifts and building areas are, in fact, on duty, and that the supplies and materials that are needed to perform their duties are available and in good shape.¹⁰ They may also ask such employees to work in other areas, if they are needed at a particular time because of a spill or a hazardous situation that needs immediate attention.

¹⁰ Porters perform routine maintenance and cleaning of floors and walls using heavy equipment, such as buffers. Aides perform routine cleaning in patient and non-patient areas such as dusting, washing, mopping, vacuuming, and emptying waste baskets. Project employees provide restorative care, such as stripping and re-finishing floors, major cleaning, and moving furniture.

However, they spent approximately 90 percent of their time performing the same duties as the porters, aides and project employees. In addition, although the Facilities Manager was responsible for hiring, disciplining and evaluating employees, the Facility Coordinators were asked to provide the Facilities Manager with information for an employee evaluation, or about employee job performance which could result in disciplinary action.

The record in the instant case reveals that as a result of a change in “management philosophy” within the environmental services department, beginning in December 1999, the Facility Coordinators were permitted to adjust employee work assignments and schedules and require employees to work overtime without securing the approval of their superiors. It also appears that the Facility Coordinators now have greater involvement in hiring, evaluating and disciplining employees. As a result of these additional responsibilities, the Facility Coordinators now spend only about 10% of their working time performing the same duties as the porters, aides and project employees. With regard to hiring, the facility coordinators now make the final decision as to who will be hired to work on their particular shift. With regard to discipline, the Facility Coordinators may counsel employees and issue oral warnings without prior approval from their superiors, and they have also effectively recommended the suspension of employees. With regard to evaluations, the Facility Coordinators fill out the annual performance appraisal form on their own, which is then reviewed by the manager, and then presented to the employee by the coordinator. Such evaluations have resulted in wage increases for employees.

Based upon the above and the record as a whole, I find that the Employer has met its burden of establishing that the Facility Coordinators are supervisors within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note particularly that the Facility Coordinators have the authority to, inter alia, hire, discipline, evaluate, assign and responsibly direct employees. *Rhode Island Hospital*, supra, at 347-349.

Accordingly, the Employer's request to clarify the unit to exclude the Facility Coordinators is hereby granted.

Food Service Coordinators

The Employer seeks to clarify the unit to exclude the six Food Service Coordinators in the Food Services Department as supervisors. The Union, contrary to the Employer, sought to exclude them from the unit as supervisory employees in 34-RC-1543. All six were permitted to vote subject to challenge by the DDE, and their names appeared on the eligibility list for both elections.

The Food Services Department, which operates seven days a week and almost 24 hours each day, is comprised of four areas. The clinical nutrition area is responsible for evaluating and preparing menus for individual patients. Primarily responsible for the overall operation and supervision of the clinical nutrition area is Director of Food Service Margherita Latina Potter, who generally works 6:30 a.m. to 4:00 p.m., Monday through Friday. The tray line area is responsible for preparing and delivering food trays to patients, as well as washing dishes and pots. Primarily responsible for the overall operation and supervision of the tray line area is Manager Melanie Cervone, who generally works from 6:30 a.m. to 3:00 p.m. Monday through Friday. The food service production area includes separate hot and cold food production areas, a store room, and a catering area. Executive Chef Emil Cerno, who generally works from 7:30 a.m. to 4:00 p.m. Monday through Friday, is primarily responsible for the overall operation and supervision of the food service preparation area. The final area is the cafeteria itself, which serves approximately 5000 to 6000 meals per day to visitors and employees. Manager Anthony DeMartino, who generally works 6:30 a.m. to 3:00 p.m. Monday through Friday, is primarily responsible for the overall operation and supervision of the cafeteria.

The Food Service Coordinator for catering/purchasing is Roberta Jones. Jones also assists in overseeing cold food production and the store room. She reports directly to Emil Cerno, and generally works 5:00 a.m. to 1:30 p.m., Monday through Friday. Reporting directly to Jones are four full-time and five part-time employees. The Food Service Coordinators overseeing the tray line

area are Gary Spell and Antonio Chardon. They report directly to Melanie Cervone, and generally work 11:00 a.m. to 7:30 p.m., Monday through Friday. Reporting directly to Spell and Chardon are approximately 10 full-time and 10 part-time employees. The Food Service Coordinators overseeing the cafeteria area are Marina Ashby, Beatrice Lewis and Gloria Hailey. They report directly to Anthony DeMartino. Ashby and Lewis generally work 6:00 a.m. to 2:30 p.m., Monday through Friday, and Hailey generally works 11:00 a.m. to 7:30 p.m. Monday through Friday. Five employees report directly to Hailey, and 12 report directly to Ashby and Lewis. Each of the Food Service Coordinators rotate into other areas on different shifts to cover for absences, vacations and holidays. Only two Food Service Coordinators, working overlapping shifts, provide weekend and holiday coverage for all areas of the food service department.

The record in 34-RC-1543 reveals that the Food Service Coordinators spent approximately 90 percent of their time performing the same duties as the other employees in the Food Services Department. The remainder of their time was spent assigning and scheduling work and overseeing the work of less experienced employees in the department (viz., dietary aides, pot washers, tray line workers, cafeteria aides, cashiers, and cooks). To accomplish this latter responsibility, the Food Service Coordinators would walk around the work areas, insuring the proper flow of work, providing assistance and support to employees, making sure that those individuals who were scheduled for that particular shift were present and working, and alerting the manager if additional personnel were needed. In addition, although the "Operations Manager" was responsible for hiring, disciplining and evaluating employees, the food service coordinators might be asked to participate in a job interview and give their impressions of the job applicant, and might be asked to provide information to the manager for an employee evaluation or for some disciplinary action.

The record in the instant case reveals that sometime during 1999, the cafeteria manager and the purchasing coordinator left the food services department and were not replaced, and that in September 2000, the chief clinical dietitian left the department and was not replaced. The duties previously

performed by those three managers have been assumed by other managers in the department. This, in turn, required the Food Service Coordinators to assume "additional responsibilities" over the employees in their respective areas. Thus, although the record in the instant case reveals that the Food Service Coordinators continue to possess the same responsibilities (i.e., ensuring the smooth operation of their assigned area, such as dealing with malfunctioning equipment or other emergencies), and continue to spend some portion of their work time performing unit work, such instances are now limited to filling in when the department is shorthanded. In this regard, although there have been no changes to their job descriptions or their wages and benefits since the issuance of the DDE and the approval of the stipulated election agreement, the authority of the Food Service Coordinators has changed significantly. More specifically, they now prepare the weekly work schedule in conjunction with the managers; assign employees to their particular work task each day, and re-assign employees as necessary to provide proper work coverage; approve employee requests for time off; send employees home with pay in the event of inappropriate behavior on the job; and call in additional employees and/or authorize employees to work overtime in order to provide proper work coverage. In addition, the Food Service Coordinators now participate with the managers in the preparation of written evaluations. Although not entirely clear, it appears that the coordinator and the manager jointly determine each employee's evaluation, which either the coordinator or the manager will reduce to writing and present it to the employee. Such evaluations determine whether an employee receives a merit wage increase.

With regard to discipline, the Food Service Coordinators also verbally counsel employees regarding any work performance or attendance problems, and they may document such discussions in the employee's file. In the event that formal disciplinary action, including termination, becomes necessary, the Food Service Coordinators refer the matter with their recommendation to their manager and Food Service Director Potter. Although the latter review the matter and make their own recommendation to the Human Resources Department and

the Vice President for Patient Services, who have the ultimately authority to approve discipline, the record reveals that the recommendations of the Food Service Coordinators are usually accepted.

With regard to hiring, the record reveals that until very recently, there was very little hiring into positions in the food service department. However, just before the hearing, five new employees were hired into part-time and per diem positions on the tray line and dishwashing areas. The Food Service Coordinators participated with the food service department managers as a "team" in interviewing the job applicants and making recommendations to Food Service Director Potter who, along with the Human Resources Department, must review and approve them.

Based upon the above and the record as a whole, I find that the Employer has satisfied its burden of establishing that the Food Service Coordinators are supervisors within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note that they have the authority to, inter alia, hire, discipline, assign and responsibly direct employees. *Rhode Island Hospital*, supra, at 347-349.

Accordingly, I shall clarify the existing unit to exclude the Food Service Coordinators.

ORDER

It is hereby Ordered that the unit in which the Union is currently the certified representative is clarified to include the Graphic Designer II, the Groundskeeper, the Senior Groundskeeper, the Lead Materials Handler, the Social Worker Assistant, Senior File Unit Clerks-Medical Records, the Lead Film File Clerk, the Lead Medical Transcriptionist, the Lead Transportation Aide, the Lead Clerk Receptionist, the Parking and Services Coordinator, the Secretary for Nursing Administration (Staff Development), and the Clerk Receptionist Room Scheduler; and to exclude the Elevator Operator, the Office Coordinator-Operating Room, the Information Consultant, the Back Lot Parking Attendant, the Office Coordinator for Anatomical Pathology, the Facility Coordinators, and the Food Service Coordinators. In all other respects the Petition to clarify the unit is hereby denied.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by March 21, 2001.

Dated at Hartford, Connecticut this 7th day of March, 2001.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
Region 34
National Labor Relations Board

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